

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
Ellen Lipton Hollander
District Court Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-0742

January 13, 2016

MEMORANDUM TO COUNSEL AND MR. CREAGER

Re: *Creager Jr. v. Bureau of Alcohol, Tobacco, Firearms and Explosives et al.*
Civil Action No. ELH-15-1518

Dear Mr. Creager and Counsel:

As you know, on July 16, 2015, Richard Allen Creager, Jr., who is self-represented, filed suit. It appears that he has sued the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) as well as Nicholas E. O’Leary, Acting Director of Industry Operations at the ATF’s Baltimore Field Office. Creager seeks “judicial review of revocation of [his federal firearms] license per 27 C.F.R. 478.78 pursuant to 18 U.S.C. 923(f)(3).” See ECF 1 at 2, “Complaint.” Mr. O’Leary was served on July 22, 2015 (ECF 5 at 2), and the U.S. Attorney for the District of Maryland was served on August 17, 2015. ECF 5 at 1.

On October 16, 2015, the defense filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) or, in the alternative, for summary judgment pursuant to Fed. R. Civ. P. 56. See ECF 7, “Motion.” The Motion was filed on behalf of an unspecified “Respondent,” although only Mr. O’Leary’s name appears in the caption of the Motion. ECF 7 at 1. Indeed, the Motion consistently refers to a single respondent, although the docket lists two defendants and the Complaint itself is not entirely clear. See e.g., ECF 7 at 1 (“Respondent hereby moves . . . to dismiss this matter . . .”).

On November 3, 2015, plaintiff filed a request for extension of time to respond to the Motion. ECF 9. Plaintiff’s request was granted on November 4, 2015. ECF 10. On November 9, 2015, plaintiff filed Petitioner’s Motion to Dismiss, or in the Alternative, for Summary Judgment. ECF 11, “Petitioner’s Motion.” Creager argues that the Motion is subject to dismissal because it was untimely filed on October 19, 2015, more than 60 days after service of the suit on O’Leary on July 22, 2015. *Id.* at 2.

The defense responded to Petitioner’s Motion on November 20, 2015 (ECF 12, “Response”), contending that the Motion was timely filed pursuant to Fed. R. Civ. P. 12(a)(2) and Fed. R. Civ. P. 6(d). ECF 12 at 2. As noted, the Motion was filed on October 16, 2015, within 60 days of service of the summons and complaint on the U.S. Attorney on August 17, 2015. See ECF 5 at 1; ECF 11 at 4; ECF 7, Motion. However, it was filed more than 60 days after service on Mr. O’Leary. And, the Response does not explain why the deadline to respond did not begin to run when Mr. O’Leary was served on July 22, 2015.

The Notice of Filing of Administrative Record (ECF 6) identifies the respondent as Mr. O'Leary. However, neither the Motion nor the Response actually identifies the respondent by name. Nor does the Motion or the Response explain why the defense believes there is only one defendant, rather than the two that appear on the docket.

Accordingly, by the close of business on January 27, 2016, the defense shall provide the Court with authority explaining its position that the time to respond to the suit was properly calculated from the date of service on the U.S. Attorney, rather than the date of service on O'Leary. The defense shall also explain why its submissions refer to a single respondent, and it shall identify that respondent.

Despite the informal nature of this Memorandum, it is an Order of the Court, and the Clerk is directed to docket it as such.

Very truly yours,

/s/

Ellen Lipton Hollander
United States District Judge

CC: Richard Creager, Plaintiff, by ordinary mail